S & M SHOPPING ARCADE SDN BHD

v.

FUI LIAN-KWONG HING SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: S6-24-2363-2002]
11 APRIL 2003

CIVIL PROCEDURE: *Judgments and orders - Consent order - Lessee and sub-lessee - Revision of rental amount - Undertaking to be bound by assessment of independent valuer - Valuation report by valuer thereof - Whether could be contested - Whether binding and conclusive*

The plaintiff had taken a sub-lease of a seven-storey complex from the defendant and was paying rentals of RM308,000 per month to the latter. By a consent order dated 12 July 2002, the parties sought to revise the rental rate thereof, and for the purpose agreed, firstly, to appoint an independent valuer to determine the open market rate for the rental, and secondly, to be bound by the determination of the said valuer. However, upon the determination of the rental rate by the independent valuer in question, assessed as it were at RM306,000 per month, the plaintiff challenged the correctness of the valuation and refused to accept the same. The defendant averred that the valuation was binding on both of them, and in the circumstances applied for an order that the plaintiff comply with the consent order, as well as the valuation of the independent valuer aforesaid.

Held:

[1] Where the parties mutually agree that the subject matter of a transaction is to be valued in accordance with the valuation that is to be carried out by a third party whose determination shall be conclusive and binding, then that valuation when prepared cannot be impeached save and except for fraud, partiality and fundamental mistake. Thus, in this case, once the parties have appointed the valuer to value the said premises, they were bound by it and must abide by the valuation, unless the valuer was guilty of some fraud or partiality or that the report was riddled with a fundamental mistake. (p 71 a-b)

[2] It can be surmised that the valuer had inspected the said premises and so the valuation report was not something that was snapped up in the air. At any rate the valuation report was expressed to be subject only to the Limiting Conditions which in no way qualify the valuation of RM306,000. The so-called qualifying words of those extracts relied on by the plaintiff may be said to be the valuer's qualification *vis-a-vis* the 'process of valuation' rather than the final valuation, and so the binding and conclusive nature of the valuation report can be said to be unaffected. (p 76 g-h & 77 f)

[3] The plaintiff was not entitled to seek further 'clarifications' from the valuer. To allow the proposed meetings to take place would transform the valuation exercise by the valuer to something akin to an arbitration which clearly this court cannot condone. (p 78 g & 79 d)

[4] The valuation report is conclusive and binding and the plaintiff is obliged to effect prompt payment of the sum of RM306,000 per month to the defendant as monthly rentals for the period 2 November 2001 to 1 November 2004. (p 80 f)

[Judgment for defendant.]

Case(s) referred to:

A Hudson Pty Ltd v. Legal & General Life of Australia Ltd [1986] 2 EGLR 130 ***(refd)***

Burgess v. Purchase & Sons (Farms) Ltd [1988] 2 All ER 4 ***(foll)***

Campbell v. Edwards [1976] 1 All ER 785 ***(refd)***

Fulcrum Capital Sdn Bhd v. Dato' Samsudin Abu Hassan; Rahaz Sdn Bhd & Anor (Interveners) & Another Case [2001] 5 CLJ 73 ***(refd)***

Jones & Ors v. Sherwood Computer Service plc [1992] 2 All ER 170 ***(refd)***

Legal & General Life of Australia Ltd v. A Hudson Pty Ltd [1985] 1 NSWLR 314 ***(foll)***

Other source(s) referred to:

Expert Determination, John Kendall, 2nd edn, pp 11, 148

The Expert In Litigation And Arbitration, D Mark Cato, pp 10-025

For the plaintiff - M Nagarajah (Yong Jee Kong); M/s Peter Goh & Nor Jaswa
For the defendant - Michael KT Chow (Olivia Loh); M/s Logan Sabapathy & Co

Reported by WA Sharif

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JUDGMENT

Abdul Malik Ishak J:

The Consent Order Dated 12 July 2002

There was a consent order before the learned judge of the S6 court dated
b 12 July 2002 and it can be seen in encl. 7. The operative parts of the consent order would be:

> IT IS HEREBY BY CONSENT ORDERED that:
>
> (a) the Plaintiff shall forthwith pay to the Defendant the sum of
c RM308,000.00 representing the outstanding payment of June, 2002 for the said Premises and shall continue to pay monthly rentals at RM308,000.00 promptly as provided in the said Sub-Lease and Guarantee Agreement until the rate by the independent registered valuer is determined as provided hereinbelow;
>
> d (b) upon receipt of the said sum of RM308,000.00, in any case, within two (2) working days of receipt thereof, the Defendant shall appoint one of the following registered valuers in accordance with Clause 4.1 (d) of the said Sub-Lease and Guarantee Agreement, namely:
>
> (i) Messrs. Jones Lang Wooton, or
>
> e (ii) Messrs. Rahim & Co., or
>
> (iii) Messrs. C.H. Williams Talhar; (and)
>
> (c) the parties hereby agree to be bound by the determination of the open market rate for the monthly rental for the said Premises, by such jointly
f appointed registered valuer pursuant to paragraph (b) above and such determination shall be binding and conclusive on both parties. The monthly rental determined by such jointly appointed registered valuer shall be the monthly rental payable by the Plaintiff to the Defendant for the period commencing 2.11.2001 to 1.11.2004.

g The parties were happy with para. (a) of the consent order; but they were at discord in regard to paras. (b) and (c) of the consent order. And so the defendant filed a summons in chambers as seen in encl. 8 and sought for the following prayers:

h
> LET ALL PARTIES CONCERNED attend before the Judge in Chambers/ Deputy Registrar on, ... the day of ... ,2002 at ... a.m./p/m. on the hearing of an application on the part of Fui Lian-Kwong Hing Sdn Bhd, the abovenamed Defendant to the Original Action ('FL-KH') for an order that:

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(1) S & M Shopping Arcade Sdn Bhd, the abovenamed Plaintiff to the Original Action ('S & M') do within seven (7) days from date of service of the Order to be made hereon comply with the Order of Court dated 12.7.2002, particularly in respect of paragraph (a) of the body thereof, by paying to FL-KH the monthly rental for the months of August and September 2002 in respect of the premises known as H.S.(D) 87424, Lot PT3, Section 20, Bandar Kuala Lumpur, previously known as C.T. No. 11013 to 11018 for Lot No. 110-115 respectively and H.S.(D) 50340 for Lot PT2, all in Section 20, Bandar Kuala Lumpur, Wilayah Persekutuan ('the said Premises');

(2) such further and/or other orders or directions be made or given as this Honourable Court deems just in the circumstances;

(3) costs of and occasioned by this application be paid by S & M to FL-KH.

In the course of the submission, Mr. Michael K.T. Chow the learned counsel for the defendant – FL-KH , sought leave of this court pursuant to prayer (2) of encl. 8 to add an additional prayer which reads like this:

> That the plaintiff (referring to 'S & M') shall also be further ordered subsequent to the making of this present order that within the 21st day of each subsequent month until 1.11.2004 pay the said sum of RM306,000.00 to the defendant (referring to 'FL-KH').

And surprisingly Mr. Yong Jee Kong, the learned counsel for the plaintiff – S & M, agreed and had no objection to the additional prayer as sought for by Mr. Michael K.T. Chow, which was in amplification to encl. 8. That was indeed a magnanimous gesture on the part of Mr. Yong Jee Kong. I readily granted it.

At any rate, in so far as that additional prayer is concerned, I certainly have the power to grant it in view of the presence of prayer (2) of encl. 8 which reads as follows:

> such further and/or other orders or directions be made or given as this Honourable Court deems just in the circumstances.

In this connection, I must refer to the case of *Fulcrum Capital Sdn Bhd v. Dato' Samsudin Abu Hassan; Rahaz Sdn Bhd & Anor (Interveners) & Another Case* [2001] 5 CLJ 73 and there at p. 115 of the report, I had this to say:

> Mr M Pathmanathan emphasised that the parties were present to address the court on the prayers in encl. 44. It was his submission that the facts and the law relating to the amended prayer (1) and the proposed amendment to prayer (2) of encl. 44 have to be addressed and so the question of surprise or new

issue cropping up did not arise at all. He submitted that by virtue of prayer (3) of encl. 44, Fulcrum was entitled to seek relief from the court for the proposed amendment to prayer (2) of encl. 44. It must be recalled that prayer (3) of encl. 44 contains an enabling prayer couched in positive terms where it sought for 'further or other orders or directions be made or given as this Honourable Court deems fit.' Indeed Salleh Abas FJ, delivering the judgment of the Federal Court, in the case of *Lim Eng Kay v. Jaafar bin Mohamed Said* [1982] 2 MLJ 156 aptly said at page 160 of the report:

> In any case prayer (e) in paragraph (7), 'Any other relief which this Honourable Court deem fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer and the prayer for 'loss of earning' in paragraph 5 (a) should entitle the court to make such an assessment.

and, accordingly, I must therefore give effect to prayer (3) of encl. 44. Mr M Pathmanathan submitted that both he and Mr Manjit Singh had addressed this court on the amended prayer (1) and the unamended prayer (2) of encl. 44 while Madam DR John had yet to begin. That being the case, so the submission went, there was no prejudice occasioned and it was emphasised that the submission that a formal application should be made in regard to the proposed amendments to prayer (2) of encl. 44 merely fortified Fulcrum's allegation of delay that was perpetrated by the defendants. In the premises, Mr M Pathmanathan urged this court to allow the oral amendment and to proceed with the matter forthwith.

Dato' V Sivaparanjothi supported Mr M Pathmanathan and he too urged this court to allow the oral application to amend prayer (2) of encl. 44 forthwith.

Incidentally, the case of *Fulcrum Capital Sdn Bhd* was also reported in another popular local law journal, namely, the Current Law Journal. It is reported as follows: [2001] 5 CLJ 73.

Reverting back to the mainstream of the case, I must now continue the narration.

Briefly put, by way of that consent order it was agreed that, at the material time, FL-KH – the defendant, shall appoint one of the nominated registered valuers named in the consent order to determine the open market rate for the monthly rental of the said premises pursuant to cl. 4.1 (d) of the sub-lease and guarantee agreement dated 15 October 1992. By that consent order too, the parties agreed to be bound by the determination of the appointed registered valuer and such determination shall be binding and conclusive on both parties. And that by that consent order too, it was agreed that the monthly rental determined by such appointed registered valuer shall be the monthly rental payable by S & M – the plaintiff, to FL-KH – the defendant, for the period commencing on 2 November 2001 to 1 November 2004.

Facts Of The Case

It would be ideal to briefly state the facts of the case and these facts are not in dispute. The relationship between the parties is governed by the sub-lease and guarantee agreement dated 15 October 1992 wherein the defendant – FL-KH, is said to be the head-lessee while the plaintiff – S & M, is said to be the sub-lessee of the said premises. A consent order was recorded between the parties on 12 July 2002 as alluded to earlier and this was in regard to, *inter alia*, the joint appointment of a registered valuer to determine the market rental of the said premises pursuant to cl. 4.1 (d) of the sub-lease and guarantee agreement. Pursuant to the consent order, Messrs. C H Williams Talhar & Wong ("the valuer") was appointed on 16 July 2002 (see exh. "D1" of encl. 9). And on 6 September 2002, the valuer produced a valuation report as seen in exh. "D2" of encl. 9 and there the valuer, *inter alia*, assessed the market rental rate of the said premises at RM306,000 per month.

The parties kindly agreed that reference to Messrs. C H Williams Talhar as alluded to at para. (b) (iii) of the consent order should refer to Messrs. C H Williams Talhar & Wong – now referred to as the valuer.

The plaintiff – S & M, contested the valuation report of the valuer and the plaintiff's main bone of contention was that the lettable area adopted by the valuer was incorrect and, consequently, the computation of the monthly rental rate was disputed.

The Pith And Width Of Para. (c) Of The Consent Order Dated 12 July 2002 As Seen In Encl. 7 Together With cl. 4.1(d) Of The Sub-lease And Guarantee Agreement Dated 15 October 1992

This brings into sharp focus para. (c) of the consent order which has been reproduced in the early part of this judgment. While cl. 4.1 (d) of the sub-lease and guarantee agreement states as follows:

> In the event that the parties are unable at the date of commencement of each individual consecutive term to agree on the open market rate, the open market rate shall be determined by a registered valuer mutually agreed upon and jointly appointed by the Lessee and the Sub-Lessee and whose determination shall be conclusive and binding on both parties.

It is crystal clear that para. (c) of the consent order and cl. 4.1 (d) of the sub-lease and guarantee agreement contain similar terms with reference to the determination of the open market rate by a registered valuer mutually agreed upon and whose determination "shall be conclusive and binding on both parties." The valuer prepared a valuation report and that report assessed the market value of the said premises at RM306,000 per month. It is this valuation report that the parties hereto have mutually agreed to be "conclusive and binding" (per

cl. 4.1(d) of the sub-lease and guarantee agreement) and "binding and conclusive" (per para. (c) of the consent order). In a nutshell and within a narrow compass, that would be the contention of the defendant – FL-KH. It was certainly a simple and logical stand.

Is The Valuation Report Prepared By The Valuer Namely, Messrs. CH Williams Talhar & Wong Binding On The Parties?

That would be the crucial question to pose and it is here that I must refer to some authorities.

For starters, I must refer to the case of *Campbell v. Edwards* [1976] 1 All ER 785, a decision of the English Court of Appeal with a coram of Lord Denning MR and Geoffrey Lane LJ. In a language that is so clear and precise, Lord Denning MR at p. 788 aptly said:

> It is simply the law of contract. If two persons agree that the price of property should be fixed by a valuer on whom they agree, and he gives that valuation honestly and in good faith, they are bound by it. Even if he has made a mistake they are still bound by it. The reason is because they have agreed to be bound by it. If there were fraud or collusion, of course, it would be different. Fraud or collusion unravels everything.

The position would certainly be clearer where the parties, just like the present case as hand, have expressly agreed that the determination by the valuer shall be "conclusive and binding" and "binding and conclusive". I am prepared to go so far and be magnanimous, even in the absence of such expression of conclusiveness, to hold and imply a term to that effect. I am not alone in adopting this kind of magnanimous approach because even the Australian Court of Appeal, with a coram of Mahoney, Priestley and McHugh JJA, in the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd* [1985] 1 NSWLR 314 adopted the same generous approach. Writing a separate judgment, McHugh JA had this to say at p. 335 of the report:

> In my opinion the question whether a valuation is binding upon the parties depends in the first instance upon the terms of the contract, express or implied. This was pointed out by Sir David Cairns in the Court of Appeal in *Baber v. Kenwood Manufacturing Co Ltd* (at 181). A valuation obtained by fraud or collusion can usually be disregarded even in an action at law. For in a case of fraud or collusion the correct conclusion to be drawn will almost certainly be that there has been no valuation in accordance with the terms of the contract. As Sir David Cairns pointed out, it is easy to imply a term that a valuation must be made honestly and impartially. It will be difficult, and usually impossible, however, to imply a term that a valuation can be set aside on the ground of the valuer's mistake or because the valuation is unreasonable. The terms of the contract usually provide, as the lease in the present case does, that the decision of the valuer is 'final and binding on the parties'. By

> referring the decision to a valuer, the parties agree to accept his honest and impartial decision as to the appropriate amount of the valuation. They rely on his skill and judgment and agree to be bound by his decision.

I am fortunate, however, that para. (c) of the consent order and cl. 4.1 (d) of the sub-lease and guarantee agreement contain expressions of conclusive terms that provide some measure of certainty and so I am spared the task of implying as to whether the valuation report prepared by the valuer is binding on the parties. Now, while still on the subject of implying an implied term as to conclusiveness, specific reference ought to be made to a book entitled *"Expert Determination"*, 2nd edn, by John Kendall, solicitor. That is indeed an interesting book and law practitioners are encouraged to read it. In that book, the learned author wrote, at p. 82, the following salient words that merit reproduction:

> **9.8.2 Would the court imply the term?**
> It is like that the court would imply a term that an expert's decision is both final and/or binding but the party seeking to establish that might face the cost and uncertainty of litigation about the issue.

I pause here to take stock of the situation. It must be recalled that Lord Denning MR in *Campbell v. Edwards (supra)* and McHugh JA in *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra)* made references to "fraud or collusion" as grounds upon which an agreed third party valuation reports could be challenged. There are other expressions that have been used in this area of the law to convey the same thoughts which would form the basis for an intervention by the courts. Thus, an expression like "fraud or partiality" has surfaced and this can be seen in *"Expert Determination"*, 2nd edn by John Kendall, solicitor where the learned author wrote at p. 11 as follows:

> 1.5.7 Mistake
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> Disallowing an expert's decision on the ground of fraud or partiality is uncontroversial. It is mistake which causes problems. A mistake has to be fundamental to constitute a sufficiently serious breach of contract, such as the expert making his decision about the wrong subject-matter. Anything less than a fundamental mistake is simply insufficient. Errors of fact or law will have to stand, provided the expert can be said to have asked himself 'the right question'.

a And at p. 148 thereto, the learned author John Kendall wrote:

> 15.3 Grounds for challenge
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> 15.3.1 Fraud, partiality and mistake
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> The courts have always said that fraud (or dishonesty) and partiality are valid
b reasons for refusing to uphold an expert's decision. Much more controversy has been generated by the question of whether a mistake also qualifies as a reason, and, more particularly, how serious the mistake has to be. The court approaches the question by looking at the wording of the contract and whether the expert's work has followed what the parties had agreed.

c So, now it can be surmised that expressions like "fundamental mistake" or "serious mistake" have surfaced as seen in John Kendall's book and these constituted grounds that would allow the courts to intervene. But, at the same time, John Kendall's book strongly suggest that mistake *per se* falling short of being fundamental or serious is not sufficient. Indeed it is interesting to note
d that the judgments of the case of *Campbell v. Edwards (supra)* and the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra)* seem to suggest that the courts have vigorously exclude mistake entirely as a permitted ground for challenge. I will now refer to *Campbell v. Edwards (supra)* by quoting in verbatim the judgments of the Law Lords. Lord Denning
e MR in *Campbell v. Edwards (supra)* aptly said at p. 788 of the report:

> It may be that, if a valuer gives a speaking valuation – if he gives his reasons or his calculations – and you can show on the face of them that they are wrong, it might be upset. But this (is) not such a case. Messrs Chesterton simply gave the figure. Having given it honestly, it is binding on the parties.
f It is no good for either party to say that it is incorrect. But even if the valuation could be upset for mistake, there is no room for it in this case. The premises have been surrendered to the landlord. He has entered into occupation of them. Months have passed. There cannot be restitutio in integrum.
>
> I may add that counsel for the tenant put forward an additional argument.
g He said: 'If this valuation is set aside, what is to take its place?' The answer is, 'nothing'. The only surveyors on whom the parties have agreed are Messrs Chesterton. The parties are unlikely to agree on any other surveyors. And Messrs Chesterton cannot reasonably be asked to make another valuation. So there would be nothing to take the place of this valuation.

h Geoffrey Lane LJ in *Campbell v. Edwards (supra)* in fine language said at p. 789 of the report:

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I agree. The parties here had agreed on a valuer. They had agreed as to the terms on which the valuer was to value the property and on which he was to be instructed. The valuation took place, it was acted on, and the tenant surrendered the lease. It is a common law situation in which there is no room for equitable remedy. The most up-to-date and accurate statement of the law in the circumstances is a passage of Lord Denning MR's judgment in *Arenson v. Arenson* [1973] 2 All ER 235 at 241, [1973] 1 Ch 346 at 363 in this court which states as follows:

> At common law – as distinct from equity – the parties are undoubtedly bound by the figure fixed by the valuer. Just as the parties to a building contract are bound by the architect's certificate, so the parties are bound by the valuer's valuation. Even if he makes a mistake in his calculations, or makes the valuation on what one or other considers to be a wrong basis, still they are bound by their agreement to accept it.

I will now revert back to the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra)* and focus on the judgment of McHugh JA. There, at p. 334, his Lordship referred to some authorities as his foundation and he said:

> In *Arenson v. Arenson* [1973] Ch 346 at 362 Lord Denning MR departed from the views which he had expressed in *Dean v. Prince*. His Lordship said (at 362):
>
> > … Whenever two persons agree together to refer a matter to a third person for decision, and further agree that his decision is to be final and binding upon them, then, so long as he arrives at his decision honestly and in good faith, the two parties are bound by it. They cannot reopen it for mistake or error on his part or for any reason other than for fraud or collusion.

And he further said at the same page:

> In *Mayne Nickless Ltd v. Solomon* [1980] Qd R 171 at 179, Sheahan J, giving the judgment of the Full Court of Queensland, said that he was strongly inclined to the view that a valuation, whether speaking or non-speaking, made by a valuer chosen by the parties was not impeachable for error or mistake.

Indeed, these are interesting expressions of the law. The law moves with the time and it is revolving and moving ahead at a fast speed. Proceeding ahead, it is also germane to refer to the case of *Jones and Others v. Sherwood Computer Services plc* [1992] 2 All ER 170, a decision of the Court of Appeal at the Civil Division with a coram of Dillon and Balcombe LJJ. Writing a separate judgment Dillon LJ accepted "fundamental mistake" as a ground of challenge but his Lordship limited its scope and ambit. At p. 179 of the report, his Lordship Dillon LJ remarked:

On principle, the first step must be to see what the parties have agreed to remit to the expert, this being, as Lord Denning MR said in *Campbell v. Edwards*, a matter of contract. The next step must be to see what the nature of the mistake was, if there is evidence to show that. If the mistake made was that the expert departed from his instructions in a material respect, eg if he valued the wrong number of shares, or valued shares in the wrong company, or if, as in *Jones (M) v. Jones* (RR) [1971] 2 All ER 676, [1971] 1 WLR 840, the expert had valued machinery himself whereas his instructions were to employ an expert valuer of his choice to do that, either party would be able to say that the certificate was not binding because the expert had not done what he was appointed to do.

The present case is quite different, however, as Coopers have done precisely what they were asked to do. They were asked to consider only the points on which Peats and Deloittes were not in agreement, to decide whether the two classes of disputed transactions were or were not to be included in the total of sales as defined in appendix I, and to determine the amount of sales accordingly; that is what they have done. Under para 7 of appendix I a decision of the accountants under para 3, if the accountants are in agreement, is to be as conclusive, final and binding as the decision of the expert if the accountants disagree with each other. But the argument for the plaintiffs has, as it seems to me, to go the length of asserting that if Deloittes had agreed with Peats that the disputed transactions were to be excluded from the total amount of sales and had consequently agreed on Peat's figures as the total amount of sales the plaintiffs could still have applied to the court to determine the true (in the court's view) amount of the sales and to hold the (ex hypothesis) joint view of the accountants not binding. I do not believe that that is the law.

Any number of issues could arise under the various sub-paragraphs of para 2 of appendix I as to the application of the wording of those sub-paragraphs to particular facts. All these issues are capable of being described as issues of law or mixed fact and law, in that they all involve issues as to the true meaning or application of wording in para 2. I cannot read the categorical wording of para 7 as meaning that the determination of the accountants or of the expert shall be conclusive and binding for all purposes 'unless it involves a determination of an issue of law or mixed fact and law in which case it shall only be binding if the court agrees with it'.

Accordingly in my judgment, because Coopers did precisely what they were instructed to do, the plaintiffs cannot challenge their determination of the amount of the sales.

I cannot help but note that the case of *Jones and Others v. Sherwood Computer Services plc (supra)* did away with the previous distinction between the so-called "speaking" and "non-speaking" valuations which was referred to in the judgment of Nourse J, in the case of *Burgess v. Purchase & Sons (Farms)*

Ltd [1988] 2 All ER 4, [1983] Ch 213 where the decision of Nourse J, had appeared to open the path for greater and wider intervention by the courts where a valuation report was a "speaking one" – meaning to say that a valuation which gives reasons for its conclusion. At p. 181 of the report in the case of *Jones and Others v. Sherwood Computer Services plc (supra)*, Dillon LJ observed:

> It follows from the foregoing that I respectfully differ from much that was said by Nourse J in *Burgess v Purchase & Sons (Farms) Ltd* [1988] 2 All ER 4, [1983] Ch 216. This stems primarily from a difference in our respective assessments of the decisions in *Campbell v. Edwards* [1976] 1 All ER 785, [1976] 1 WLR 403 and *Baber v. Kenwood Manufacturing Co Ltd* [1978] 1 Lloyd's Rep 175, which I regard as binding on us as the starting point of the reassessment of the law in this field after the decisions of the House of Lords which I have mentioned but which he, I apprehend, regarded as heretical and illogical departures from the established doctrine enunciated in *Dean v. Prince* [1954] 1 All ER 749, [1954] Ch 409; in effect Denning LJ's first thoughts in *Dean v. Prince* ought to be preferred to his second thoughts in *Arenson v. Arenson* [1973] 2 All ER 235, [1973] Ch 346 and *Campbell v. Edwards.* However, it is unnecessary to encumber this over-long judgment with further analysis of *Burgess v. Purchase & Sons (Farms) Ltd*, which on any view is not binding on this court.

Dillon LJ expressly dismissed the validity of the distinction between "speaking" and "non-speaking" valuation reports and his Lordship held that mere mistakes, other than "fundamental mistakes", were not sufficient to render invalid an otherwise final and conclusion valuation reports that were binding on the parties. I will now refer to the judgment of Nourse J. in the case of *Burgess and another v. Purchase & Sons (Farms) Ltd and Others* [1983] 2 All ER 4. At p. 11 of the report, his Lordship Nourse J. expressed the law in these salient words:

> In my judgment the present state of the law can be summarised as follows. The question whether a valuation made by an expert on a fundamentally erroneous basis can be impugned or not depends on the terms expressed or to be implied in the contract pursuant to which it is made. A non-speaking valuation made of the right property by the right man and in good faith cannot be impugned, although it may still be possible, in the case of an uncompleted transaction, for equitable relief (as opposed to damages) to be refused to the party who wishes to sustain the valuation. On the other hand, there are at least three decisions at first instance to the effect that a speaking valuation which demonstrates that it has been made on a fundamentally erroneous basis can be impugned. In such a case the completion of the transaction does not necessarily defeat the party who wishes to impugn the valuation.

> Whether this will hereafter be found to be the law to be applied to speaking valuations by some higher court is not for me to say. I merely proffer the following observations. It may be that the rule can be justified on the footing that a valuation made on a fundamentally erroneous basis is no more that for which the parties have contracted than one made of the wrong property or by the wrong man or in bad faith. The possibility of there being an implied term to that effect was discussed by Sir David Cairns in *Baber v. Kenwood Manufacturing Co* [1978] 1 Lloyd's Rep 175 at 181. Where the contract provides for the valuation to be fair it might often be said that there was a breach of an express term. In either event there must remain something of an anomaly in that the right to impugn a valuation for fundamental error, as opposed to bad faith for example, depends solely on whether the evidence which makes the attack possible is or is not voiced by the valuation itself. The reconciliation may be that the law ought not to shrink from an anomaly where the court can see for itself a fundamental error on the face of the very exercise for which the parties have contracted. It may be that Harman J's analogy with trustees and directors is after all a sound basis for the rule.
>
> As for the suggestion that the rule, if otherwise soundly based, ought now to be reconsidered in the light of *Arenson v. Arenson* and *Sutcliffe v. Thackrah* I must, with the greatest respect to the views of Lord Denning MR and Megaw LJ, if indeed they went that far, express my own view that that cannot be correct. Like Buckley LJ and Sir Seymour Karminski in *Arenson v. Arenson* when dealing with the converse, I do not think that the question of what remedy, if any, the plaintiff may have against the valuers has any relevance to the question of what is his remedy against the other party to the contract. That course is charted between the Scylla of leaving the plaintiff with no remedy at all and the Charybdis of assuming that every valuation made on a fundamentally erroneous basis involves negligence on the part of the valuer, an assumption which no court of justice could make. Take for example the valuer who proceeds on a fundamentally erroneous construction of the agreement which it is not within his professional competence to detect. In such case there could be no invariable rule that the valuer was liable in negligence. Of greater practical significance, take the valuer who only agrees to act on terms that he is not to be liable in negligence, a protection which the law does not deny him. That example seems to me to be the clearest exposure of the plaintiff's plight and the surest ground for saying that the suggestion cannot be correct.

These are some of the views of other learned judges from other jurisdictions. I hearken to their sound judgments. Different judges would certainly have different views.

I am of the view that the legal position may be stated in this way. That where the parties mutually agree that the subject matter of a transaction is to be valued in accordance with the valuation that is to be carried out by a third party whose determination shall be conclusive and binding, then that valuation when prepared cannot be impeached save and except for fraud, partiality and fundamental mistake. Translated to the facts of the present case, it may be stated that once the parties have appointed the valuer to value the said premises they are bound by it and they must abide by the valuer's valuation unless they can show that the valuer has been guilty of fraud or partiality or that the valuer's valuation report is riddled with a mistake that is so fundamental.

The Challenge Advanced By The Plaintiff Pertaining To The Valuation Report Prepared By The Valuer, Namely, Messrs. CH Williams Talhar & Wong

The plaintiff did not allege that there was fraud or partiality on the part of the valuer – Messrs. CH Williams Talhar & Wong, simply because the plaintiff could not make such an allegation bearing in mind that this firm of registered valuer was one of the three nominees advanced by the plaintiff in the consent order for the defendant's agreement and that by para. (c) of the consent order, the valuer to which the defendant has signified its agreement is none other than Messrs. CH Williams Talhar & Wong and so that valuer shall be treated as "jointly-appointed" by the parties.

Significantly, however, what the plaintiff has sought to contend by way of a challenge – although not phrased in so many words would be this. That Messrs. CH Williams Talhar & Wong had based its valuation on the wrong rentable area of the said premises. It must be emphasised that the valuation report of Messrs. CH Williams Talhar & Wong had proceeded on a rentable area of 98,330 square feet and when applying the rate of RM3 per square foot to it, the valuation sum would come up to RM306,000.

In mounting its challenge, the plaintiff seemingly relied upon the valuation reports of two other valuers. These two other valuers were unilaterally commissioned by the plaintiff and they were Messrs. Jones Lang Wooton and Messrs. Rahim & Co. As if to give some semblance of authority to the plaintiff's two choices, these registered valuers were also named in para. (b) of the consent order as reproduced in the early part of this judgment. It would be noteworthy to mention, as if by a stroke of coincidentality, that these two other valuers, namely, Messrs. Jones Lang Wooton and Messrs. Rahim & Co produced valuations that adopt a lower rentable area of 86,662 square feet.

The stand of the defendant was quite clear. The defendant said that the plaintiff merely sought to rely on those two unilateral and self-serving valuations which this court should not give any weight at all. I have heard the submissions of the learned counsel on both sides and I have this to say. That, of pertinence would be the consent order as seen in encl. 7 and by virtue of that consent order, the only relevant and pertinent valuation report is the report prepared by the valuer known as Messrs. CH Williams Talhar & Wong. Of course, the plaintiff is at liberty and is given the freehand to commission and appoint other valuers as it so wishes. And each of these valuers as commissioned by the plaintiff on a unilateral basis may repeat and adopt the same style of valuation and arriving at the same rentable area as that prepared by Messrs. Jones Lang Wooton and Messrs. Rahim & Co. Whoever the plaintiff commissions to prepare the valuation report on the rentable area of the said premises makes not a whit of a difference. It is of no consequence at all. It would not, in any way, detract from the "conclusive and binding" as well as the "binding and conclusive" nature and the report of Messrs. CH Williams Talhar & Wong – the valuer whose valuation report must be placed on a higher premium. I am only concerned with the valuation report prepared by Messrs. CH Williams Talhar & Wong and I must hold and it is my judgment that the two other valuation reports prepared by Messrs. Jones Lang Wooton and Messrs. Rahim & Co must be disregarded totally as they carry and have no effect whatsoever for the purposes of these proceedings. I am certainly motivated by authority emanating from the English Court of Appeal in the case of *Campbell v. Edwards (supra)*. That was a case where the landlord commissioned its own self-serving valuation reports after having agreed to the appointment of a specific valuer but whose valuation turned out not to be in its favour, and the Court of Appeal gave no effect whatsoever to such self-serving valuations. At p. 787 at para. "f" to para. "h", Lord Denning MR said:

> He got new valuations for the value of the remainder of the lease. He got them from two other surveyors. Mann Winkworth made a valuation dated 18th April 1974 putting the value as 3,500 pounds Hinton & Co on the 18th June 1974 put it at 1,250 pounds. I must say that, even to a layman that seems a remarkably low assessment, especially when you remember that there were over six years to run of this lease and that no rent was payable under it.
>
> Having got those two new valuations the landlord challenged Chestertons' valuation of 10,000 pounds. On 17th June 1974 he issued a writ claiming that he was not bound by it. In the statement of claim he said:
>
> > The valuation was incorrect in that the true surrender value of the lease at the specified date was under 4,000 pounds. In the circumstances, Messrs. Chesterton must be presumed to have assessed the price in an incorrect manner and their valuation is therefore vitiated.

Continuing at p. 788, Lord Denning MR in the same case aptly said:

> In my opinion therefore the landlord is bound by this valuation of 10,000 pounds. I would just like to add this. The position of a valuer is very different from an arbitrator. If a valuer is negligent in making a valuation, he may be sued by the party – vendor or purchaser – who is injured by his wrong valuation. But an arbitrator is different. In my opinion he cannot be sued by either party to the dispute, even if he is negligent.

Geoffrey Lane LJ in the same case observed at p. 789 of the report:

> In this case counsel for the landlord has argued that there is sufficient discrepancy between the valuer's report and the subsequent valuations obtained by his client to indicate that the valuers, Chestertons, must have acted on a wrong principle. He says that, despite the fact that this is not a speaking report, that wide discrepancy is sufficient to cast doubt on the valuation. I disagree. There is nothing to suggest that the valuer here did not take into consideration all the matters which he should have taken into consideration, and where the only basis of criticism is that another valuer has subsequently produced a valuation a third of the original one it does not afford, in my view, any ground for saying that Chestertons' valuation must have been wrong.

That would be the law in respect of the self-serving valuations.

But, lest I am accused of being "off guard" and "overlook" other salient points, I have this to say. Put at its highest point, the valuation reports of Messrs. Jones Lang Wooton and Messrs. Rahim & Co may have raised a doubt as to the accuracy of the rentable area as valued by Messrs. CH Williams Talhar & Wong. Put in another way, a mistake may have been made by Messrs. CH Williams Talhar & Wong in the course of valuing the rentable area of the said premises. But the law in regard to a mistake in a valuation report is fairly settled. Mere mistake in law is not sufficient to denude the valuation report of Messrs. CH Williams Talhar & Wong of its binding effect. To go to the extreme and to take the analogous facts that arose in the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra)* would certainly be ideal and useful. In that case, the Court of Appeal found as a matter of fact that the valuer had wrongly included certain floor area in arriving at its valuation of the "current annual open market rental value of the demised premises" which valuation the parties there had graciously agreed would have been "final and binding". But, notwithstanding such a patent error, the valuation was upheld by the Court of Appeal to be "final and binding" on the parties. McHugh JA writing a separate judgment for the Court of Appeal aptly said at p. 336 of the report:

> There is also nothing in the nature of the mistake which indicates a departure from the terms of the contract. The mistake was one made in the process of valuation. But it was not a departure from the terms of the contract.

This very case went on appeal to the Privy Council and the latter confirmed the decision of the Court of Appeal. The decision of the Privy Council is reported as *A Hudson Pty Ltd v. Legal & General Life Of Australia Ltd* [1986] 2 EGLR 130. The coram for the Privy Council comprised of Lord Keith of Kinkel, Lord Templeman, Lord Griffiths, Lord Oliver Of Alymerton and Lord Goff of Chieveley. A strong coram indeed. Lord Templeman delivering the judgment of the Privy Council forthwith dismissed the appeal and his Lordship affirmed the non-intervention approach of the courts. In a language of unparalleled clarity, Lord Templeman said at p. 131 of the report:

> In general their Lordships consider that it would be a disservice to the law and to litigants to encourage forensic attacks on valuations by experts where those attacks are based on textual criticisms more appropriate to the measured analysis of fiscal legislation.

The Valuation Report Prepared By The Valuer, Namely, Messrs. CH Williams Talhar & Wong Is Said To Be Inconclusive

The learned counsel on behalf of the plaintiff did not give up hope. He launched a concerted attack on the valuation report itself – particularly as to its contents. That was indeed an ingenious approach.

The valuation report of the valuer can be seen in encl. 9 at exh. "D2" and it was emphasised that the valuation report seemed to suggest that the valuation was not final or conclusive. Certain extracts from p. 11 of the valuation report were highlighted and, for convenience and clarity, I must now reproduce those extracts which were said to be the so-called qualifying words:

> Notes:
>
> > We are not provided with the original approved building plans. For the purpose of this valuation exercise, we have adopted the lettable area as stated in the letter prepared by Messrs Perunding Senikos Quantity Surveyors & Construction Cost Consultants under Ref No: PSK 12000/ C/1(A) dated 6th February 2002.
> >
> > This valuation is based on information available and are presumed to be correct. We reserve the right to amend the facts and value in the event these are incorrect.

I wonder whether the plaintiff was saying that the valuation report of the valuer showing the rental of the said premises at RM306,000 per month was not to be preferred and that the plaintiff still preferred the rental of the said premises

on a monthly basis at RM308,000 as reflected in para. (a) of the consent order as reproduced earlier. I am sure that cannot be the stand of the plaintiff because the monthly rental of RM308,000 as alluded to in para. (a) of the consent order was to be the amount payable "until the rate by the independent registered valuer is determined as provided hereinbelow."

Another baffling conduct of the plaintiff would be this. Previously the plaintiff's stand as demonstrated by the plaintiff's solicitors' letter to the defendant's solicitors dated 31 October 2002 as seen in exh. "WSL9" of encl. 11 and not in exh. "WSL10" of encl. 11 showed that the plaintiff had acknowledged the binding nature of the valuation report prepared by the valuer – Messrs. C H Williams Talhar & Wong, on the parties. The relevant paragraph of that letter dated 31 October 2002 reads as follows:

> 2 Notwithstanding the fact that the said report is binding on the parties pursuant to Article 4.1 (g) of the Sub-Lease & Guarantee Agreement dated 15.10.1992 and the Consent Order dated 12.07.2002, our client is not precluded from seeking clarification from the said valuer in respect of the assessment of the lettable area of 98,330 square feet, the computation of the monthly rental and other relevant issues pertaining to the said report. The clarification is necessary in view of the fact that the said report was prepared based on information provided by your client to the valuer (after the consent order was recorded) without our client's approval.

By way of a rebuttal, the learned counsel for the defendant in the person of Mr. Michael KT Chow rightly submitted that:

(a) the valuer had given an unqualified valuation of RM306,000 per month. The unqualified nature of the valuation was backed up by the valuer's cover letter dated 23 July 2002 as seen at p. 1 of the valuation report (see exh. "D2" of encl. 9) as well as at p. 23 of the valuation report itself. The valuer's cover letter dated 23 July 2002 was worded in this way:

> We thank you for instructions to assess the market rental value of the above captioned property for rental review purposes.
>
> We have carried out an inspection of the property and investigated available data related and relevant to the matter.
>
> We are pleased to report that in our opinion, the market rental value of the subject property ON THE BASIS AND PROVISO AS STATED IN DETAIL UNDER TERMS OF REFERENCE HEREIN free from all encumbrances is RM306,000.00 (Ringgit Malaysia: Three Hundred And Six Thousand Only) per month.

Our full Report and valuation is contained herein. This valuation is subject to the Limiting Conditions, a copy of which is attached at the end of this report.

Whereas the valuer's report at p. 23 was worded in this way:

VALUATION : Taking into consideration the above factors, we therefore assess the market rental value of the subject property ON THE BASIS AND PROVISO AS STATED IN DETAIL UNDER TERMS OF REFERENCE HEREIN free from all encumbrances at RM306,000/- (Ringgit Malaysia: Three Hundred And Six Thousand Only) per month.

IN ARRIVING AT THE MARKET RENTAL VALUE, AS INSTRUCTED BY THE CLIENT WE HAVE ADOPTED THE FOLLOWING BASIS:-

(1) THE SUBJECT PROPERTY COMPRISES THE LAND AND THE SEVEN STOREY COMMERCIAL COMPLEX WITH ONE LOWER GROUND FLOOR AND THREE BASEMENTS (EXCLUDING THE SIXTH FLOOR) AS PER THE FLOOR PLANS PROVIDED TO US,

(II) REFERENCE IS MADE TO THE AGREEMENT SUB-LEASE AND GUARANTEE DATED 15TH OCTOBER 1992 AND THE SUBSEQUENT LETTER DATED 7TH OCTOBER 1992,

(III) TERM OF LEASE : 2ND NOVEMBER 2001 TO 1ST NOVEMBER 2004.

CERTIFICATION: The valuation of the above property has been carried out by CHONG PAH AUNG BSc (Estate Management) FRICS FISM Chartered Valuation Surveyor & Registered Valuer (V-153).

And it can be surmised that the valuer had inspected the said premises and so the valuation report was not something that was snapped up in the air. At any rate, the valuation report was expressed to be subject only to the Limiting Conditions which in no way qualify the valuation of RM306,000 per month. It must also be noted that those Limiting Conditions are as set out in Appendix "H" of the valuation report and it merely touched on, inter alia, restrictions to which the parties could have used the valuation report;

(b) the extracts at page 11 of the valuation report that were reproduced earlier significantly show at the second part thereof that the reservation of the right to amend, have no reference whatsoever to the rentable area, which

appear in the preceding paragraph simply because the valuer clearly did not presume those measurements of the rentable area to be correct but rather the valuer had taken the necessary steps to:

(i) visit the said premises (see p. 4 of the valuation report in exh. "D2" of encl. 9); and

(ii) verify the computation of the rentable area by relying on the letters from the Quantity Surveyor by the name of "Perunding Senikos" as reflected in the letters dated 6 February 2002 and 22 July 2002 as seen and reflected at Appendix "C" to the valuation report.

I have perused through the extracts as reproduced earlier with a toothcomb, and I have this to say. The reliance by the plaintiff on the extracts of the valuation report cannot be used to attack the validity of the valuation report which report was otherwise an unqualified report in every sense of the word. The attacks advanced by the plaintiff can easily be termed as nothing more than an unsolicited "forensic attacks based on valuations by experts where those attacks are based on textual criticisms more appropriate to the measured analysis of fiscal legislation" (per Lord Templeman in *A Hudson Pty Ltd v. Legal & General Life Of Australia Ltd (supra)* at p. 131 thereto). I must therefore, just like Lord Templeman in that case, discourage an attack of this nature on an otherwise perfect valuation report.

In the final analysis, the so-called qualifying words of those extracts relied on by the plaintiff may be said to be the valuer's qualification *vis-a-vis* the "process of valuation" rather than the final valuation and so the binding and conclusive nature of the valuation report can be said to be unaffected. This is the very approach adopted by McHugh JA in the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra)* and there his Lordship, in style, said at p. 335 G to p. 336 B:

> But a valuation which is the result of the mistaken application of the principles of valuation may still be made in accordance with the terms of the agreement. In each case the critical question must always be: Was the valuation made in accordance with the terms of a contract? If it is, it is nothing to the point that the valuation may have proceeded on the basis of error or that it constitutes a gross over or under value. Nor is it relevant that the valuer has taken into consideration matters which he should not have taken into account or has failed to take into account matters which he should have taken into account. The question is not whether there is an error in the discretionary judgment of the valuer. It is whether the valuation complies with the terms of the contract.

And further down the same page, his Lordship said:

> There is also nothing in the nature of the mistake which indicates a departure from the terms of the contract. The mistake was one made in the process of valuation. But it was not a departure from the terms of the contract.

I would surely follow the same approach. A well trodden path. It seems to me that the law allows for mistakes to be committed in the "process of valuation" without so much as affecting its binding and conclusive nature. Thus, the qualifying words of those extracts, ambiguous as it were, made by the valuer to "accommodate" the possibility of the presence of a mistake in the "process of valuation" must be tolerated by this court as it falls within the same level of tolerance as alluded to by McHugh JA in the case of *Legal & General Life Of Australia Ltd v. A Hudson Pty Ltd (supra).*

The Plaintiff's Proposed Meetings With The Valuer

Notwithstanding the "conclusive and binding" nature of the valuation report, the plaintiff sought to make an issue of its attempt to have a meeting with the valuer to discuss the basis of the valuation report. The various correspondences exchanged between the parties during that period of time would show that the defendant had not agreed to such a meeting as proposed by the plaintiff but instead the defendant suggested that whatever issues the plaintiff wished to raise may be done in writing without the need of having a meeting.

It must be highlighted that if the defendant agree to such a meeting after the issuance of the valuation report by the valuer then it would undermine the "binding and conclusive" nature of the valuation report bearing in mind that the plaintiff's stated objectives for the proposed meetings were to extract further reasons from the valuer for the valuer's methods of ascertaining the rentable area. So, looking at the correspondences between the parties, it can readily be surmised that it was for these reasons that the defendant had not agreed to the proposed meetings.

At any rate, it must be emphasised that the plaintiff was not entitled to seek further "clarifications" from the valuer. The caution that was administered by John Kendall in his book entitled "Expert Determination" as alluded to in the early part of this judgment should be recalled to mind. There, the learned author aptly said (see p. 163 at para. 15.7.9):

> 15.7.9 Reasons
>
> Can the expert be compelled to produce reasons for his decision? This would have the effect of either:

(a) turning a non-speaking decision into a speaking one, where the expert had not been specifically instructed beforehand to produce a speaking decision; or

(b) giving more detail to an existing speaking decision.

In the latter context, the court has regarded this prospect with some alarm. It should not be easier to challenge a reasoned award issued by an expert than a reasoned award issued by an arbitrator (*Campbell and Palmer v. Crest Homes (Wessex) Ltd* 1(1989) unreported, Chancery Division, 13 November). The court has not encouraged applications (Previously under Arbitration Act 1979, s. 1(5): this has now been repealed and the new provision is. Arbitration Act 1996, s. 70(4)) for orders that arbitrators give reasons (*Universal Petroleum Co Ltd v. Handels and Transport GmbH* [1987] 1 WLR 1178). The court is therefore very unlikely to insist on an expert giving reasons where it was not agreed beforehand that he would.

Furthermore, to allow the proposed meetings to take place as suggested by the plaintiff would transform the valuation exercise by the valuer to something akin to an arbitration which clearly this court would not condone. According to the learned author by the name of D Mark Cato in a book entitled *"The Expert In Litigation And Arbitration"*, there is a marked difference between "expert determination" and "arbitration" and he proceeded to say at p. 10-025 as follows:

025 In this respect, the following Table compares the expert determination and arbitration processes. It can be used as a guide to determine whether the parties' true intentions are for expert determination or for arbitration.

Table 1

EXPERT DETERMINATION	ARBITRATION
An expert is not necessarily bound to hear the parties.	The parties to an arbitration have the right to be heard if they wish (*Hammond v. Wolt* [1975] VR 108 at 112 per Menhennitt J, and the cases cited therein)
A decision based on personal expertise, especially if the tribunal possesses professional status, suggests that the process is an expert determination (see *Sport Maska, supra* at 589-590 per L'Heureux-Dube J)	An arbitral award must be based on the submissions made by the parties, and is governed by the dispositive rule, whereby the arbitrator's choice is 'limited by fixed options determined by the opposing arguments of the parties' (*Sport Maska, supra* per L'Heureux-Dube J at 596)

These differences are certainly food for thought for us to digest.

The Summary

I have examined in some detail the relevant authorities germane to the occasion at hand. From these authorities, it would be appropriate for me to say that:

(1) To circumvent the binding and conclusive effect of the valuation report prepared by the valuer – Messrs. CH Williams Talhar & Wong, the plaintiff must show that the valuer had asked itself the wrong question. This, the plaintiff had not done.

(2) At the highest point, the various arguments and issues raised by the plaintiff would only affect the "process of valuation". But the law is clear. Even if there is a mistake (here, none has been shown), it will not affect the validity and binding effect of the valuation report. The plaintiff highlighted the qualifying words of those extracts but these cannot take the plaintiff any further because they can be said to have arisen during the "process of valuation". Here, the valuer did not ask the wrong question.

(3) If what the plaintiff says is correct in that the valuation report is not "deemed conclusive", then the plaintiff would have to continue to pay the monthly rental of RM308,000 per month as set out in para. (a) of the consent order rather than the amount of RM306,000 a month as determined by the valuer, namely, Messrs. CH Williams Talhar & Wong. But, events have shown that the plaintiff has not been paying that higher rate.

(4) It is part and parcel of my judgment that the valuation report is "conclusive and binding" and that the plaintiff would be obliged, legally speaking, to effect prompt payment of the sum of RM306,000 per month to the defendant on a monthly basis as monthly rental in respect of the period from 2 November 2001 to 1 November 2004.

The Conclusion

For the reasons as adumbrated above, I gave judgment in favour of the defendant. To be specific, I gave an order in terms of encl. 8 together with the additional prayer as sought for by Mr. Michael KT Chow this morning.